

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Kohen Diallo Uhuru,

**Plaintiff,**

No. 2:23-cv-00200-KJM-DMC (PC)

ORDER

Walters et al.,

## Defendants.

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 25, 2024, the magistrate judge filed findings and recommendations, which were served on plaintiff, and which contained notice to all parties that any objections to the findings and recommendations were to be filed within 14 days after being served with the findings and recommendations. *See* F&Rs, ECF No. 15. Plaintiff filed an objection to the F&Rs. *See* Objections, ECF No. 16.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207–08 (9th Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007). (“[D]eterminations of law by

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1 the magistrate judge are reviewed de novo by both the district court and [the appellate] court  
2 ....”).

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this  
4 court has conducted a *de novo* review of this case. Having reviewed the file, the court declines to  
5 adopt the findings and recommendations.

6 Plaintiff asks to proceed in forma pauperis, which magistrate judge recommends denying  
7 because plaintiff is a “three striker” under 28 U.S.C. § 1915(g). *See* F&Rs at 1–2. The magistrate  
8 judge cites plaintiff’s prior cases that were dismissed for failure to state a viable claim and when  
9 amendment would have been futile, and then concludes plaintiff has not properly alleged  
10 imminent physical danger. *See id.* at 2. Plaintiff objects and claims he has alleged imminent  
11 danger. *See* Objections at 3–4. The issue here is whether plaintiff has properly alleged imminent  
12 physical danger, and the court concludes he has.

13 Section 1915 does not permit a “three-striker” to proceed in forma pauperis unless he  
14 alleges an imminent danger of serious physical injury. *Andrew v. Cervantes*, 493 F.3d 1047, 1055  
15 (9th Cir. 2007). The Ninth Circuit has explained that “imminent” danger means an allegation of  
16 “an ongoing danger.” *Id.* at 1056 (citation omitted). As a result, an allegation that “prison officials  
17 continue with a practice that has injured [plaintiff] or others similarly situated in the past will  
18 satisfy the ‘ongoing danger’ standard.” *Id.* at 1057 (citation omitted). That allegation must be  
19 “both fairly traceable to unlawful conduct alleged in [the] complaint and redressable by the  
20 court.” *Ray v. Lara*, 31 F.4th 692, 701 (9th Cir. 2022). As the Ninth Circuit has recognized, the  
21 court “must liberally construe [a pro se plaintiff’s] allegations.” *See Andrews v. Cervantes*,  
22 493 F. 3d 1047, 1055 (9th Cir. 2007) (citations omitted).

23 Plaintiff alleges dangers to his physical health owing to the poor ventilation at the prison  
24 where he is housed, due to defendants’ ADA violations. *See* FAC at 10, ECF No. 13. Plaintiff  
25 also claims other injuries from ADA violations including retaliatory deprivation of access to a  
26 medical walker or wheelchair. *See id.* The F&Rs do not address these allegations, stating only  
27 that plaintiff is bringing claims relating to religious practice rights. F&Rs at 2. The court finds  
28 the allegations in the complaint satisfy the imminent danger exception as plaintiff complains of

1 several physical maladies that prison staff were either indifferent to or were allegedly trying to  
2 exacerbate. *See Jackson v. Bick*, 2017 WL 363017, at \*2 (E.D. Cal. Jan 24, 2017). The court  
3 recognizes that plaintiff has not provided much detail to support these allegations, but the court  
4 construes the pro se plaintiff's allegations liberally and finds the exception is met. *See Andrews*,  
5 493 F. 3d at 1055. Because the magistrate judge has not yet screened the complaint as required  
6 by the in forma pauperis statute, *see* 28 U.S.C. § 1915(e)(2), the court refers this matter back to  
7 the assigned magistrate judge.

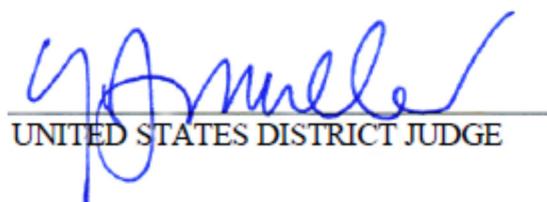
8 Accordingly, IT IS HEREBY ORDERED as follows:

9 1. The findings and recommendations (ECF No. 15) are **not adopted**; and  
10 2. This matter is **referred back** to the magistrate judge for further pretrial proceedings  
11 consistent with this order.

12 IT IS SO ORDERED

13 DATED March 5, 2025.

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UNITED STATES DISTRICT JUDGE